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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/665,676 | 09/19/2003 | James Patterson Bryant | 12093/926 | 6268 |
| 26646 | 7590 | 02/09/2006 | EXAMINER | |
| KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004 | | | SMALLEY, JAMES N | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3727 | |

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|-------------------------------|---|--|
| Office Action Summary | Application No. 10/665,676 | Applicant(s) BRYANT, JAMES PATTERSON | |
| | Examiner James N. Smalley | Art Unit 3727 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10 January 2006 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7 rejected under 35 U.S.C. 103(a) as being unpatentable over Berezandky US 5,462,322 in view of Wheatley US 5,301,913.

Berezansky '322 teaches a clamp comprising a top clamp (1) with a threaded top clamp bolt hole (5), a base clamp (2) with a threaded base clamp bolt hole (6), a bolt (4), and a lip holding area (7) and (8). The bottom clamp can rotate from the top clamp in the unsecured position about hinge (3). In a closed position the serrated portions (7) and (8) form a nearly circular geometry, which is read by the Examiner to comprise an "approximately semi-circular geometry."

Berezansky '322 does not teach a fitting to accept and secure the bolt.

Wheatley '913 teaches a fitting (62) with internal threading (64) to accept a bolt in a locking clamp. In col. 4, lines 5-11, Wheatley '913 teaches the provision of a threaded fitting allows for a greater clamping strength, as opposed to threads formed directly in the leg (34). It further states that the threads may be formed in the leg (34) if the additional strength is not needed.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the clamp of Berezansky '322, providing the fitting taught by Wheatley '913, motivated by the benefit of providing increased clamping strength. Furthermore, Examiner notes the fitting of the Applicant appears to comprise a separation of a known integral structure, such as that of Berezansky '322, into separate parts. It has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Examiner further notes the base clamp (12) is the obvious location for the penetration and fitting to be disposed, because the top clamp is only comprised of thinned metal.

Furthermore, it would have been obvious to locate the penetration in the base clamp. Examiner notes Wheatley '913 shows the fitting in the top clamp. However, because the clamp of Berezansky '322 is comprised of two identical parts, the fitting would have to go in one or the other. As such, by applying the clamp to a lid with the fitting in the bottom half, that portion would thus comprise the "base" clamp.

Regarding the limitations whereby the claimed device is to be used for securing a drum lid, Examiner notes the device of Berezansky '322 is capable of being used in the intended manner, i.e. for securing a drum closure to a drum, because it meets all claimed structural limitations. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding claim 6, the area around the threaded hole is read to be a "hardened seat."

Regarding claim 7, the inside edge of the serrated portion is semi-circular and thus read to be a "rounded knuckle."

4. Claims 1-7 rejected under 35 U.S.C. 103(a) as being unpatentable over Montross US 1,059,747 in view of Wheatley US 5,301,913.

Montross '747 teaches a clamp comprising a top clamp (7) with a top clamp bolt hole, a base clamp (8) with a threaded base clamp bolt hole (17), a bolt (15), and a lip holding area (9) and (10). The bottom clamp can rotate from the top clamp in the unsecured position about hinge (13).

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Montross '747 does not teach the top clamp hole being internally threaded.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide threading in the top hole, motivated by the benefit of better securing a connection between the top clamp and the bolt. Furthermore, Examiner notes the lower hole is provided with threading. The replication of threading in the top hole would comprise no more than a mere duplication of the working parts of the invention. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Furthermore, Montross '747 not teach a fitting to accept and secure the bolt.

Wheatley '913 teaches a fitting (62) with internal threading (64) to accept a bolt in a locking clamp. In col. 4, lines 5-11, Wheatley '913 teaches the provision of a threaded fitting allows for a greater clamping strength, as opposed to threads formed directly in the leg (34). It further states that the threads may be formed in the leg (34) if the additional strength is not needed.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the clamp of Berezansky '322, providing the fitting taught by Wheatley '913, motivated by the benefit of providing increased clamping strength. Furthermore, Examiner notes the fitting of the Applicant appears to comprise a separation of a known integral structure, such as that of Berezansky '322, into separate parts. It has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Regarding the limitations whereby the claimed device is to be used for securing a drum lid, Examiner notes the device of Montross '747 is capable of being used in the intended manner, i.e. for securing a drum closure to a drum, because it meets all claimed structural limitations. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding claims 3-4, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

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In re Leshin, 125 USPQ 416. Furthermore, it is known to form metallic devices of stainless steel to prevent corrosion around threading which would otherwise impede the insertion of a bolt or screw.

It would be obvious to one having ordinary skill in the art at the time the invention was made to form the device of Montross '747 of a strong, highly rigid material such as metal, motivated by the benefit of providing rigidity to the clamp. Furthermore, it would have been obvious to one having ordinary skill to form the clamp of stainless steel, motivated by the benefit of preventing rust from forming around the screw threads.

Regarding claim 5, Montross '747 does not teach the size of the clamp. However, Examiner notes a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the overall size of the device of Montross '747 such that the bolt diameter would be formed to less than 1 inch, motivated by the benefit of sizing the device to fit various sized flanges.

Regarding claim 6, the area around the threaded hole is read to be a "hardened seat."

Regarding claim 7, flange member (9) is read to be the rounded knuckle.

5. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montross US 1,059,747 in view of Wheatley US 5,301,913 as applied above, and further in view of Kunin '687.

Regarding claims 8-9, Montross '747 discloses securing a casket with clamps placed over the drum ring (3) and (4). Examiner reads the burial casket to comprise a "drum." The reference teaches in the second column of page 2 of the Specification, lines 73-77, "Any desired number of clamps 6 may be employed..."

Kunin '687 teaches it is known to secure a lid and container closed with three clamps.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide three, or any other suitable number of clamps taught by Montross '747 to secure the burial casket, as taught by Kunin '687, motivated by the benefit of providing the desired securing strength to seal the casket.

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6. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kunin US 1,450,687 in view of Berezansky US 5,462,322 and in view of Wheatley US 5,301,913.

Kunin '687 teaches a method of sealing a drum with three drum closure arrangements provided over a drum ring (8), but does not teach the top clamp and the base clamp forming a lip holding area.

Berezansky '322 teaches a clamp comprising a top clamp (1) with a threaded top clamp bolt hole (5), a base clamp (2) with a threaded base clamp bolt hole (6), a bolt (4), and a lip holding area (7) and (8). The device appears equally capable at being selectively applied to a container rim.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the clamps of Berezansky '322 to secure the drum lid of Kunin '687 because the clamp is equally capable of securing the drum lid.

Furthermore, Berezansky '322 does not teach a fitting to accept and secure the bolt.

Wheatley '913 teaches a fitting (62) with internal threading (64) to accept a bolt in a locking clamp. In col. 4, lines 5-11, Wheatley '913 teaches the provision of a threaded fitting allows for a greater clamping strength, as opposed to threads formed directly in the leg (34). It further states that the threads may be formed in the leg (34) if the additional strength is not needed.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the clamp of Berezansky '322, providing the fitting taught by Wheatley '913, motivated by the benefit of providing increased clamping strength. Furthermore, Examiner notes the fitting of the Applicant appears to comprise a separation of a known integral structure, such as that of Berezansky '322, into separate parts. It has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Response to Arguments

7. Applicant's arguments filed 10 January 2006 have been fully considered but they are not persuasive.

a) Applicant argues the prior art fails to teach a separate penetration for housing the fitting.

Examiner notes Wheatley '913 teaches a penetration to house the fitting. Furthermore, it is inherent that a penetration be provided since the fitting must have a space into which to be disposed.

b) Applicant argues the device of Berezansky '322 cannot be used as a drum closure.

Examiner notes that while a perfect fit may not be achieved, the device is still capable of providing a clamping pressure to secure a lid. However, Examiner further notes the claim is drawn to a closure, but does not claim the drum and therefore the device need only be capable of being used in the intended manner.

c) Applicant argues a person of ordinary skill would not combine a pick-up truck bed mounting device with any of the cited clamping devices.

Examiner notes that while each of the clamps are drawn to differing applications, in the end they are all clamps and therefore one having ordinary skill in the clamping arts would find a technology useful in one clamp as having utility in another clamp, despite the intended use of the device. The penetration and fitting taught by Wheatley '913 are useful about a bolt which serves to drive the clamp into a clamping position. Because all of the applied prior art references are clamps driven by a bolt, one having ordinary skill would find such a technology useful these clamps.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns


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